4357.

SUPREME COURT OF THE UNITED STATES.

No. 217.

SALVADOR CASTRO, APP'T,

vs.

THOMAS A. HENDRICKS, COMMISSIONER OF THE GENERAL LAND OFFICE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

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District of Columbia, to wit:

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the third day of the same month, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second. Present: the hon'bles James Dunlop, chief judge, James S. Morsell, Wm. H. Merrick, asst. judges. Wm. Selden, esq., marshal; John A. Smith, clerk.

In the records of the proceedings of the said court, among others are the following, to wit:

The UNITED STATES or the relation of SALVADOR CASTRO
vs.
The Hon. THOMAS A. HENDRICKS, Com'r of the General Land Office.

Be it remembered, that the relator, by Robert J. Brent, esq., his attorney, filed in court here, on the third day of May, 1858, the following petition and exhibits, to wit:

To the honorable the judges of the circuit court of the District of Columbia for Washington county.

The petition of Salvador Castro respectfully showeth, that he is a citizen of California, claiming title to part of a certain tract of land duly granted by the government of Mexico to one Antonino Buelna, in the year 1839; and with a view to a confirmation of his said title, your petitioner filed his petition, praying such confirmation before the board of land commissioners, established by the act of Congress passed on the third day of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," ch. 41.

That for the want of necessary evidence touching the derivative title under said Buelna, the said claim was rejected by said commissioners, but an appeal therefrom being taken by your petitioner to the district court of the United States, for the northern district of California, the said omitted evidence was duly supplied, and it was so proceeded in said district court, having competent jurisdiction of said claim under and by virtue of the said act of Congress and the supplements thereto; that on the 14th day of January, A. D. 1856, the said district court, by its final decree passed in said cause between your petitioner and the United States, duly confirmed said claim of your petitioner to the

tract of land named and described in the metes and bounds specifically set forth in said decree.

Your petitioner further showeth, that an appeal being prayed by the attorney of the United States from said decree to the Supreme Court of the United States, the said appeal was afterwards duly withdrawn and dismissed by the order of said attorney of the United States, so that said decree became final and conclusive, and so remains to this day final and conclusive, in no way vacated, annulled or suspended.

Your petitioner further showeth, that after said appeal was so dismissed, a certain J. W. Mandeville, the surveyor general of California, duly commissioned and qualified, proceeded duly to discharge the duty in that behalf imposed on him by law, by surveying or causing to be surveyed and platted the lands of your petitioner, as described and embraced in said decree of confirmation by said district court of the United States; and as such surveyor general afterwards, and in due form of law, on the 19th day of November, 1857, certified and approved his said survey and location of the lands, and a plat or map thereof, so described in said decree, and further certified that said survey and said map or plat thereof were made in conformity to the terms and description of said decree; and also further certified, that upon presentation of said survey with the copy of said final decree of said district court, and the map annexed to his said certificate, your petitioner was entitled to receive a patent from the General Land Office for said lands so surveyed, and which said certificate of said surveyor general, under his official seal and signature, together with the copy of said decree of said district court, and of said map or plat so annexed to said certificate, was afterwards duly transmitted and filed in the General Land Office of the United States, where the same is now, and a copy of which said official certificate and decree, when hereafter filed in this cause, your petitioner prays to be taken as part hereof.

Your petitioner further showeth, that he afterwards appeared at the said General Land Office, by his legal attorneys, H. P. Hepburn and Robert J. Brent, and presented said official approved survey and plat or map thereof by the surveyor general of California, together with the certified copy of said decree so annexed to the said survey as aforesaid, to the Commissioner of the said General Land Office, and thereupon claimed that a patent should issue to your petitioner for his said lands, as authorized and required by the thirteenth section of the aforesaid act of Congress, passed on the third day of March, 1851.

But your petitioner further showeth, that so far from executing and performing the purely ministerial duty required of him as aforesaid, by issuing or causing to be issued a patent to the petitioner for said lands, so confirmed and surveyed, the said Commissioner of the Land Office, on the contrary thereof, caused to be

prepared written instructions, which he signed, and a copy whereof, dated February 3d, 1858, is herewith filed, and prayed to be taken as part hereof; and your petitioner's said counsel being informed of the design and purpose of said Commissioner of the Land Office, to remand said survey of the said surveyor general, with a view to the alteration and modification thereof, in conformity with said instructions or suggestions, and believing that such remanding was prejudicial to the legal rights of your petitioner in the premises and unwarranted by law, did at once pray an appeal to the honorable the Secretary of the Interior, who by law has the supervision and control over the said land office; that afterwards, the said Secretary of the Interior overruled said appeal, and confirmed the said instructions signed by the honorable Thomas A. Hendricks, Commissioner of the Land Office, as more fully appears by the letter of the honorable Jacob Thompson, Secretary of the Interior, dated the thirteenth day of March, 1858, marked A, herewith filed, and prayed to be taken as a part hereof; that thereupon, your petitioner's counsel obtained from the said Secretary of the Interior a rehearing of said appeal, and the same being referred to the General Land Office, was again acted upon unfavorably to your petitioner, as appears by the annexed report of the Hon. Thomas A. Hendricks, dated the seventeenth day of April, 1858, marked "April 17, 1858," prayed to be taken as a part hereof; that afterwards, the said Secretary of the Interior affirmed the said last mentioned report, and finally refused to issue or cause to be issued to your petitioner a patent for his said lands, as appears by the two letters of the Hon. Jacob Thompson, dated the thirteenth day of April, 1858, and first day of May, 1858, copies whereof, marked "B and C," are prayed to be taken as part hereof.

Your petitioner further showeth, that one of his said counsel afterwards received a written refusal from the Hon. Thomas A. Hendricks, to issue said patent as required by law, as appears by the annexed copy thereof, marked "D," and prayed to be taken as part hereof.

Your petitioner further showeth, that he is greatly prejudiced and hindered in his just rights and legal title by reason of the premises, and that he is advised and so avers, that all said proceedings on the part of the honorable Commissioner of the Land Office and the Secretary of the Interior, are illegal and without warrant of law, and in violation of the plain ministerial duty imposed on them.

Your petitioner further charges, that said decree of the district court, and said approved survey of the surveyor general, are final and conclusive upon the ministerial officers of the government, as well as upon the government itself, and the Attorney General of the United States has so decided in a similar case arising

under the said act of 1851, as your petitioner will show at the hearing of this case.

Your petitioner further showeth, that it is the duty and practice of the Commissioner of the Land Office, in all cases where a patent for lands is required to be issued, to cause the patent to be duly and formally prepared and engrossed, ready to receive the signatures of the appropriate officers of the government.

Wherefore, inasmuch as your petitioner has exhausted all reasonable and proper efforts to obtain his patent without legal proceedings, he himself prays that your honors, the premises considered, will award the United States writ of mandamus to be directed to the Hon. Thomas A. Hendricks, Commissioner of the Land Office, commanding him first to prepare or cause to be prepared in due form of law for the signatures of the proper officers of the government, and in accordance with the usage and practice of the land office, a patent conveying to your petitioner the lands described in said survey of said surveyor general; secondly, to cause said patent, when ready for the requisite signatures of the appropriate officers, to be presented to the recorder of the land office and the President of the United States, or other proper officers of the government, for their respective signatures; thirdly, to deliver the said patent, when so prepared and duly subscribed, to your petitioner; and as in duty bound, &c., &c.

ROBERT J. BRENT,
For Petitioner.

STATE OF MARYLAND,
City of Baltimore, sct.

I hereby certify, that on this third day of May, in the year eighteen hundred and fifty-eight, before the subscriber, a justice of the peace of said State, in and for said city, personally appeared Hyatt P. Hepburn, one of the counsel of the petitioner, Salvador Castro, in the aforegoing petition, and made oath on the Holy Evangely of Almighty God that the matters and things in the aforegoing petition set forth, are true to the best of his knowledge, information, and belief.

DAN'L E. MYERS,
J. Peace.

STATE OF MARYLAND,
Baltimore city, sct.

I hereby certify, that Daniel E. Myers, esquire, before whom the annexed affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore city, this 3d of May, A. D. 1858.

[SEAL.]

GEO. E. SANGSTON,
Clerk of the Superior Court of Baltimore City.

GENERAL LAND OFFICE, *February 3d*, 1858.

SIR: This office has had under examination the case of the eastern part of the "San Gregorio" rancho, confirmed to Salvador Castro, being the "one league" portion of that grant, as presented in your communication of the 19th November last, which is accompanied by a plat of a survey executed in August, 1857, by R. W. Norris, giving this part of the claim an area of 15,733.54 acres, or about 3½ leagues of land, and being an excess of 2½ leagues in quantity.

The facts in the case are as follows: A grant was made 2d May, 1839, by Alvarado to Buelna, of a tract of 4 leagues. Three leagues of this land was retained by Madame Rodrigues, widow of Buelna, the original grantee, and this has been confirmed to and surveyed for her, giving her that quantity. The residue of this grant or the eastern portion is the part we have now to deal with; and in regard to it, we find that on 29th January, 1849, Madame Rodrigues and husband made a deed for it to Salvador Castro, describing the same as "one league of land, in the location known by the name of San Gregorio, situated on the coast to the north of Santa Cruz, and which land, consisting of four leagues, was the property of Antonio Buelna. The land sold, and to which I refer, is one league from the Laguna Hondo, including the Laguna far enough to complete one league."

It seems that it was considered necessary for Rodrigues and wife, representing Buelna, to execute another deed "for more definite boundaries," which they did, bearing date 7th August, 1852, describing the boundaries, as follows: "Commencing at the stake marked 'A,' in the Cañada de las Tunis, where the Arroyo de las Tunis comes out of the mountains; thence running southwardly with the ridge of the mountains to the stake 'B,' on the Arroyo Hondo, until it meets the Arroyo de San Gregorio; thence following the Arroyo de San Gregorio to a stake marked 'C,' on a white rock in the mountain, situated on the west side of said Arroyo; thence northwardly about two miles to a high conical peak of the mountain, on which is placed a stake marked 'D;' thence easterly to the place of beginning."

The decree of confirmation by the United States district court, refers to the description substantially the same as given in the 2d deed above mentioned, adding these words: "The tract hereby confirmed, containing by estimation one square league, and being the same land described in the conveyance to claimant, filed

before said board, and constituting a part of the record in this cause."

It will not, it is presumed, be contended that either the law of 3d March, 1851, delegating authority to the courts for the adjudication of these claims, conferred power upon them to enlarge and nearly double the original basis of the claim; in other words, to give away of the United States public lands a quantity of land equal to $2\frac{1}{2}$ leagues greater than is contained in the original Mexican grant. Neither the treaty, the laws of nations, nor the legislation of Congress on the subject contemplate any such a state of things as this.

The United States recognize and confirm what Spain or Mexico had done in good faith in the quantity of lands, and nothing more. We must of course so understand, and execute the judicial decrees of confirmation, and in so doing in this case, we will have no difficulty in awarding to Castro the league of land sold and confirmed to him, taking care at the same time to keep the deeds in question in view as to the locus. How is this to be done? Why, by discarding the erroneous initial point which was taken by deputy Norris, and beginning at the Arroyo, (called in the deeds and decree de las Tunis,) which doubtless will be found, if not since dried up by natural causes, at or near the intersection with the mountains on the N. westerly line of fractional sect. 25, T. 6 S., R. 4 West; thence following the course of the present survey south 36° east to a gate post, marked M M; thence south 34° 15″ east to place of post B; thence with the meanders of Arroyo Hondo to an alder tree marked S G, white rock on the left bank of the Arroyo; thence to a post marked S G on summit of hill to a peak, mentioned in the decree; and thence with a straight line northeasterly to the place of beginning. This will give just about one league, satisfy the terms of the original grant of the sale to Castro, the treaty, act of Congress, and give a lawful and proper construction to the decree, and be a legal satisfaction thereof. In connexion with this case, the location of the 3 league portion of the Buelna grant, viz., that part confirmed to Madame Rodrigues, widow of Buelna, is necessarily drawn in question; and it occurs to me, that if the rough Deseño conveys anything like an approximate idea of the configuration of the land, that the present northwest boundary of the 3 league part should be carefully reviewed, particularly on the north side, with the suggestion whether a location more in coincidence with the Deseño and grant would not require a depression to the southward of that line, say from the dividing line between sections 33 and 34, T. 6 S., R. 5 W., in a northeasterly direction, striking at or near the centre of the dividing line of section 22. At the summit of the Santa Cruz mountains, excluding the land north of that line, and embracing the land south of it, and which latter is suggested in the foregoing as the probable northerly line of the one league

to Castro. With these views before you, it is requested that you will cause a further and careful examination to be made in the whole matter, and report the result, with your decision as to the true boundaries of the league confirmed as aforesaid to Castro, and also of the 3 leagues to Madame Rodrigues.

Very respectfully, your obdt. servt.,
(Signed) THOS. A. HENDRICKS,
Commissioner.

J. W. MANDEVILLE, Esq.,
U. S. Sur. Genl., San Francisco, California.

(Copy.)

GENERAL LAND OFFICE, *April* 17, 1858.

SIR: In the case of the eastern portion of the "San Gregorio" rancho, confirmed to Salvador Castro, being for "one league," this office, under date of February 3d, 1858, prepared instructions to the surveyor general of California, ordering a further examination, upon the ground that the return of survey made by that officer represented the aforesaid eastern portion as containing an excess of 2½ leagues over the quantity sold and confirmed.

From that proposed proceeding the counsel for Castro took an appeal, followed by a communication dated the 13th ulto. from the Secretary of the Interior, approving our proposed action in the premises. Subsequently, H. P. Hepburn, Esq., attorney, asked, for reasons stated, a re-hearing. This application having been referred from the department on the 26th, I have the honor to return herewith Mr. Hepburn's application, the printed argument presented by him, and the Hon. Robt. J. Brent, counsel; and in addition to the views presented in our instructions herewith of 3d Feby., 1858, respectfully submit the following:

It is not disputed that the district court has authority to fix boundaries as well as to confirm titles, but it is contended the court has no power to enlarge or go beyond the limits of the original grant, and that its proper function is to execute the contract entered into in this case by the Mexican authorities, and nothing more.

The original grant to Buelna contained four square leagues. The plats returned for that grant, viz., for the claim of Castro the eastern portion, and that for Rodriguez the western, embrace six and a half square leagues, an excess of 2½ leagues over the said Buelna grant; thus awarding, as we think, that quantity of the public lands of the United States as an excess to said grant. We do not, in the proposed proceeding, resist the decree, but assert that in making the survey under it, the surveyor has erred in taking a wrong initial point; and we suggest a further examination to find the proper initial point at another locality along the mountains, that by so doing the survey would be made to

harmonize with the original grant with the Diseño, and at the same time conform to the decree. We have alleged no error in the decree, and our object is properly to determine its "effect and construction."

Had the estimate been twice the quantity, we should not of course go outside of established well defined boundaries to make up the quantity where the original grant and decree affirmed those boundaries, but if the confirmee could show that his quantity was cut short by such an error of the surveyor as we think has occurred in this Castro case, by taking a wrong starting point, and it appeared that by taking a point suggested, the terms of the decree would be complied with, and he would get his full quantity named therein, we should certainly direct a re-examination of the survey to do full justice to the claimants.

There is no "rule for preferring quantity to boundaries," where the original grant and confirmation both fix the boundaries as the controlling data. Just the reverse of this assumption in any case of that class would obtain. But where, as is a matter of universal notoriety, the general mode of distributing public lands in California restrict the grant to quantity, with the qualification "a little more or less," on account of the rude and defective system of fixing limits, in the absence of a surveying system in that country, either under the domination of Spain or Mexico, the quantity, for the most obvious reason, *because* the governing rule, and so obtains generally in the original grants and decrees of confirmation.

Wherever quantity and limits can be reconciled with the original grant and confirmation, it is of course our duty to have it done.

It is not contended by this office that the confirmation extended beyond the grant, but that the error is with the surveyor in locating the claim.

The decree recites that this is "a portion of the four league grant" to Buelna, and that it is the same land described in the conveyance to claimant, filed," &c. This is part of the decree, the whole of which with the grant itself must be examined and satisfied in locating the tract.

It is maintained, that all the General Land Office has to do, is to see that there is a final confirmation and a location of that confirmation.

We agree to this with the understanding that we shall be satisfied the location is a lawful and proper one, but if satisfied that it is neither lawful nor proper, will it be maintained that we should carry such a location into patent upon the ground that it is merely a ministerial act?

In a case analogous in principle, in the language of the learned Attorney General Wirt, upon an assumption like this: "The President, whose peculiar constitutional function is to see that

the laws are properly executed, is himself to become instrumental in a conscious breach of these laws by signing the patent, because an inferior officer has ignorantly or inadvertently taken a false step."

It is now proposed to review the Castro survey, on the ground that it is outside of the original grant, or at least that a portion of it has been so located, and the government thus deprived of the excess herein above mentioned.

If it be ascertained that in locating both the Castro & Rodriguez within the grant, there is not found the quantity of four leagues, the loss in damages must fall upon the Rodriguez, as the deed to Castro referred to in the decree carries one league, and is a relinquishment to that extent in favor of Castro, the boundaries recited in said deed being considered as fixing the locus of the claim to that extent within the original grant.

This office looks to the re-organization act of 4 July, 1836, for its authority of "supervision and control"* in this matter, and understands the Attorney General's opinion of 29th Sept'r, 1857, according to its plain terms and import, to wit: "A person who claims land in California under a title from Mexico, is entitled to have a patent for it issued out of the General Land Office here, whenever he shows that his claim has been finally confirmed by the commissioners, by the district court or the supreme court, if he at the same time accompanies that proof with a survey certified and approved by the surveyor general of California;" that is, he is to have a patent for his "Mexican" claim, not for something not included in but outside of that claim.

In view, therefore, of the whole matter, and after careful consideration of the able argument of the counsel for Castro, this office feels constrained to adhere to the views presented in the proposed instructions of 3d February last herewith, but the matter is respectfully re-presented for your further consideration and directions.

The papers in the case, No. 1 to 13 inclusive, are herewith submitted.

With great respect, your obdt. servt.,
THOS. A. HENDRICKS, *Commissioner.*

Hon. JACOB THOMPSON, *Sec'y Interior.*

(Copy.)

A.

DEPARTMENT OF THE INTERIOR,
Washington, March 13th, 1858.

SIR: I return herewith the surveys and papers which accompanied your report of the 18th ultimo, in the case of the survey

*See case, Barnard vs. Ashley, 18 Howard, p. 45; and Bell vs. Heame, 19 Howard, p. 262.

of the eastern portion of the San Gregorio rancho, California, confirmed by the U. S. dist. court, for the northern district of that State, to Salvador Castro; involving also the survey of the western portion of the same original rancho, confirmed to Maria Concepcion Valencia de Rodriguez.

After consideration, I approve the views expressed in your proposed instructions to the surveyor general of California, directing a re-examination and re-survey of these two claims: it being manifest on the perusal of this report to you of the 19th Nov'r, 1857, that in approving the surveys now before me, he did not properly construe the closing paragraph of the decree of the court, confirming Castro's claim, which confirms to said Castro "the land as described and bounded in the conveyance to the claimant, or to so much thereof as is comprised within the limits of the original grant."

The effect of this is to confine the claimant to the limits of the original grant, and he cannot have all the boundaries in his original deeds if they extend beyond those limits.

Very respectfully, your obdt. servt.,

(Signed) J. THOMPSON,
Secretary.

The COMMISSIONER of the GENERAL LAND OFFICE.

(Copy.)

B.

DEPARTMENT OF THE INTERIOR,
Washington, April 30th, 1858.

SIR: I have carefully considered your report of the 17th instant, on the application of H. P. Hepburn, esq., for a rehearing in the matter of the survey of the eastern portion of the San Gregorio rancho, California, confirmed to Salvador Castro.

The mistake which, by clerical inadvertance, occurred in my decision by letter of the 13th ultimo, addressed to you, whereby the opinion of the court in the case is quoted as the "decree of the court," does not appear to be very material, and the reasons urged for a review of that decision are insufficient.

In returning the surveys of the eastern and western portions of this rancho to the surveyor general, I desire that his attention be called to the fact that the courses and distances on the northern, northeastern, and western lines of his survey do not enclose the land according to the description of those lines in the decree of confirmation in Castro's case.

Very respectfully, your obdt. servt.,
J. THOMPSON, *Secretary.*

The COMMISSIONER of the GENERAL LAND OFFICE.

Copy.

C.

DEPARTMENT OF THE INTERIOR,
Washington, May 1st, 1858.

SIR: I enclose to you herewith the renewed application, dated April 30th, 1858, of R. J. Brent and H. P. Hepburn, Esqrs., attorneys for Salvador Castro, for a patent on the survey recently forwarded to the General Land Office, of the private land claim in California, known as the eastern portion of the San Gregorio rancho.

On the 30th ultimo I decided to sustain your opinion that the survey in this case should be returned to the surveyor general of California, with instructions to re-examine the same and report thereon; and, as a consequence, this application will for the present be referred, and the issuance of a patent under the confirmation in Castro's case will remain suspended till further report from the surveyor general of California has been received and considered.

Very respectfully, your obdt. servant,
J. THOMPSON, *Secretary*.

The COMMISSIONER of the GENERAL LAND OFFICE.

Copy.

D.

GENERAL LAND OFFICE, *May 1st*, 1858.

SIR: Pursuant to your personal application of this date, I enclose herewith copies A, B, and C of the communications dated 13th March, 30th April, 1858, and 1st inst. from the honbl. Secretary of the Interior, respecting your application for a patent for the eastern portion of the San Gregorio ranch confirmed to Salvador Castro.

It will be seen from paper A, that the Secretary approved the proposed instructions (dated 3rd Feby., 1858) from this office to the surveyor general of California for a re-examination of the survey in this case, on the ground of error therein, there being an excess in said survey of 2½ leagues over the one league sold by the widow of the original grantee to Castro; and in paper B, the Secretary directs that, "in returning the surveys of the eastern and western portions of this rancho to the surveyor general, he desires that his attention be called to the fact that the courses and distances on the northern, northeastern, and western lines of his survey do not enclose the land according to the description of those lines, in the decree of confirmation in Castro's case;" and in paper C he decides "to sustain" my "opinion that the survey

in this case should be returned to the surveyor general of California, with instructions to re-examine the same and report thereon; and, as a consequence, this application will for the present be refused, and the issuance of a patent under the confirmation in Castro's case will remain suspended, till further report from the surveyor general of California has been received and considered."

This office, therefore, for the present refuses your application for the patent on said survey, which is certified under date 19th Novr., 1857, and the issuing of it will remain suspended, as ordered in the terms above stated from the Secretary of the Interior.

Very respectfully, your obdt. servt.,
THOS. A. HENDRICKS,
Commissioner.

H. P. HEPBURN, Esq., *for Castro, present.*

Whereupon, the said petitioner, by his attorney aforesaid, moved the court for a rule on the Hon. Thomas A. Hendricks, Commissioner of the Land Office, to show cause, if any he can, why a writ of mandamus should not issue as prayed, which was granted, and the 15th May was the day on which the rule was to be heard, provided a copy of said rule was served on him before the 8th inst.; and the day for hearing the rules was extended to the tenth day of June, 1858. And now, to wit, the said 10th day of June, comes into court here the said Hon. Thomas A. Hendricks, by Philip B. Key, Esq., the United States attorney, and files in court the following answer and exhibits, to wit:

To the honorable the judges of the circuit court of the District of Columbia.

A rule of your honorable court has been served upon the undersigned, Commissioner of the General Land Office, to show cause why a mandamus should not issue, as prayed in the petition of Salvador Castro.

The undersigned is bound by law to perform the duties of his office, under the direction of the Secretary of the Interior and President of the U. S. So far therefore as this proceeding may be intended to control him in the discharge of his official functions, by substituting the direction and control of others for that of the Secretary or President, he protests against it as unauthorized and illegal; protesting that your honors have no authority to control his official action as prayed, nor to make him, as Commissioner of the General Land Office, and through him the executive of the government of the U. S., a party to this proceeding, or to require him to make answer therein. In discharge of the rule of the court, he says:

That on the second day of May, in the year 1839, a grant of

land was made by Alvarado, the governor of the department of California, pursuant to Mexican laws and regulations, to Antonio Buelna, of "four square leagues, a little more or less, situate on the north side of the establishment of Santa Cruz;" that the 3d condition of the grant was, that it should contain four square leagues, a little more or less," as shown by the map annexed to the expediente; that upon said map there was this memorandum, to wit: "The tract of land exhibited by this map contains four leagues of land"—the words a little more or less not being used. A translated copy of said grant is herewith filed, and made a part of this answer, marked A.

It is further true, that after the death of the said Buelna, to wit, on the 29th January, 1849, Madame Rodrigues (widow of Buelna) and her husband, Francisco Rodrigues, with a view to the payment of the debts of the said Buelna, and in consideration of fifteen hundred dollars, made a deed to the petitioner for one league of the said land, describing the same as "one league of land in the location known by the name of San Gregorio, situated on the coast, to the north of Santa Cruz, and which land, consisting of four leagues, was the property of Antonio Buelna. The land sold to which I refer is one league from the laguna Hondo, including the laguna far enough to complete one league." A copy of said deed is filed as a part of this answer, marked B.

It appears that it was afterwards considered necessary for Rodrigues and his wife to execute another deed for the same land "for more definite boundaries," which they did, bearing date 7th August, 1852, making the description as follows: "Commencing at the stake marked "A" in the Canada de las Tunis, where the Arroyo de las Tunis comes out of the mountains; thence running southwardly with the ridge of the mountains to the stake "B," in the Arroyo hondo; thence following the said Arroyo hondo until it meets the Arroyo de San Gregorio; thence following the Arroyo de San Gregorio to a stake C, on a white rock in the mountain situate on the west side of said Arroyo; thence northwardly about two miles to a high conical peak of the mountain, on which is placed a stake, marked D; thence easterly to the place of beginning. A translated copy of said deed is filed as a part of this answer, marked C.

It does not appear, nor is it believed that the said last deed was given for any new or additional consideration, nor with a view to an enlargement of the grant to the petitioner, but ostensibly for the purpose of giving more certain description to the league of land mentioned in the first deed. Indeed, upon the face of the last mentioned deed, it is shown that it was made without any new consideration, and for the one league of land mentioned in the first deed.

Three leagues of the land granted to Buelna were retained by

Madam Rodrigues, widow of Buelna, and the same has been confirmed to, and surveyed for her, giving her that quantity.

True it is, that proceedings were had relative to the claim of the petitioner before the board of land commissioners in California, and before the district court of the United States for the northern district of California, and the confirmation was made in favor of the petitioner, as stated by him in his petition, and in the said decree of confirmation, the following is the description: "Commencing at a stake marked 'A,' in the Canada de las Tunis, where the Arroyo de las Tunis comes out of the mountains; thence running southerly along the ridge of the mountains to the stake marked 'B,' on the Arroyo hondo, (Deep creek;) thence following said Arroyo until it meets the Arroyo de San Gregorio; thence following the same to a stake marked 'C,' on a white rock in the mountains, west of said Arroyo; thence northwardly about two miles to a high conical peak of the mountains, and to a stake marked 'D;' thence easterly to the beginning, being a portion of the four leagues granted April 16th, 1839, by J. B. Alvarado to Antonio Buelna, and known as San Gregoria; the tract hereby confirmed containing by estimation one square league, and being the same land described in the conveyance to claimant, filed before said board, and constituting a part of the record in this cause."

But it is not admitted, nor is it believed to be true, that it was intended by the said confirmation, or that the said confirmation had the effect to give the petitioner any lands outside of the proper limits of the Buelna grant, or to give to the petitioner a greater quantity of the lands of the said grant than was contemplated by the parties in the execution of the said deeds B and C, to wit, one league thereof.

It is further true, that after said confirmation a survey was made on behalf of the petitioner, under the authority of the surveyor general of California, and by him approved, and returned to the General Land Office, (a copy of which is filed as a part of this answer, marked D.)

But it is not admitted, nor is it believed to be true, that the said survey was a correct survey of the lands of the petitioner, as described in said decree of confirmation. On the contrary thereof, the undersigned believes the same to be an incorrect survey, and that it exceeds in quantity the real claim of the petitioner by nearly two and a half leagues, and that a proper survey thereof may and ought to be made, according to the descriptions of the land in said deeds B and C, and in said decree of confirmation, so as to give the petitioner all the land to which he is justly entitled, and at the same time not to press the proper limits of the Buelna grant, and include lands of the United States, nor to include any portion of the three leagues reserved by Madam Rodrigues.

It is true that after said survey was reported to the General Land Office, the undersigned did carefully examine the same in connection with the grant to Buelna the two deeds marked B and C, and the decree of confirmation, and did come to the opinion and decision that the said survey was not a true and correct survey of the land of the petitioner, nor in accordance with the said grant, deeds, and confirmation; but that the same, through fraud or gross mistake and inattention, had been made so as to include nearly two and one-half leagues of land that did not belong to the petitioner, and that would not fall within the lines of his claim if properly run, and that the same did include nearly two and one-half leagues of land of the U. S.; and being satisfied that according to law and good conscience he ought not to cause the same to be carried into patent without further and thorough investigation, the undersigned did, on the 3d day of February, 1858, cause to be prepared and did sign, with a view to transmission, instructions to the surveyor general, to the effect that he should cause a further and careful examination to be made in the whole matter, and report the result with his decision, as to the true boundaries of the league confirmed to Castro, and the three leagues to Madame Rodrigues. A copy of said instructions is filed as a part of this answer, marked E.

It is also true, as stated by petitioner, that he did appeal from said action and decision to the Secretary of the Interior, and the Secretary, after fully considering the subject, did overrule said appeal and did affirm the decision of the General Land Office, and did confirm the instructions aforesaid; and that afterwards, the undersigned did refuse to cause to be issued to the petitioner a patent upon said erroneous and defective survey, and did so inform the petitioner through his attorneys, as stated in the petition, and he does still refuse to issue any patent upon said survey, as he believes it to be his duty in law to do.

It is not disputed that the district court had authority to fix the boundaries as well as to confirm the title to this claim. But it is insisted by the undersigned, that by the act of 3rd March, 1851, no authority was conferred upon the board of commissioners or upon the court to enlarge and nearly double the real claim; in other words, to give away of the public lands of the U. S., a quantity of land nearly equal to two and one-half leagues greater than was contained in the original Mexican grant, as is virtually claimed shall be done in this case. Neither the treaty, the laws of nations, nor the legislation of Congress, contemplate such a thing. Nor does the undersigned concede that the court intended to or did by its decree enlarge the Buelna claim from four to six and one-half leagues, or the claim of the petitioner from one to three and one-half leagues, and upon no legal principle can such a construction to that decree be given? On the contrary thereof, he does insist that a correct and proper survey, in accordance with the terms of the decree of confirmation, will

give to the petitioner about one-league of land, and to Madam Rodrigues three leagues, all within the proper limits of the Buelna grant; with a view to such a result, the instructions of 3rd February, 1858, were prepared.

The Secretary of the Interior and the undersigned do consider the excess of $2\frac{1}{2}$ leagues in a survey of one league such palpable, if not conclusive evidence of fraud or gross mistake, as to render the issue of a patent thereon improper and against conscience.

The undersigned does insist:

1st. That this honorable court has no authority of law to direct him in the discharge of any of his duties as Commissioner of the General Land Office, and therefore cannot issue the writ prayed by the petitioner.

2d. That by the 1st section of the act of 4th July, 1836, "to re-organize the General Land Office," the undersigned is required to discharge the duties of his office, "under the direction of the President of the U. S.;" and that if, under the circumstances of the case, it is his duty to cause the patent sought by the petitioner to be issued, then the remedy of the petitioner is to obtain from the President the order therefor; and therefore he has a direct and sufficient remedy without the intervention of this court, and the writ prayed ought not to issue.

3rd. That by the section of law above mentioned, the surveys of the public lands, and also of "private claims of land," are made "subject to the supervision and control of the Commissioner of the General Land Office, under the direction of the President of the U. S.," which supervision and control are not taken away by the act of 3d March, 1851; and, therefore, when the survey of the claim of the petitioner was reported to the Gen'l Land Office, it was the duty of the undersigned thoroughly to examine the same, and if he should find it correctly made in accordance with the grant and decree, then to prove it; but if he found the same to be erroneous, and through fraud or mistake to have been incorrectly made, then it became his duty to reject or suspend the same, or to give such orders for its correction as the facts and the law should require, subject of course to the direction of the Secretary of the Interior and the President of the U. S.; and over the judgment of the undersigned in such a case, this honorable court could exercise no control.

4th. That the survey upon which the petitioner seeks a patent through fraud, negligence, or mistake, was not correctly made, but is erroneous, and includes nearly two leagues and one-half of land as aforesaid, to which the petitioner is not entitled, and therefore the court ought not to issue any writ requiring the issue of a patent thereon.

The undersigned prays to be discharged from further answer, either to the petition of the petitioner or the order of the court.

General Land Office, May 20th, 1858.

THOS. A. HENDRICKS, *Commissioner.*

A.

MONTEREY, 1° *de Marzo de* 1839.

Informe el administrador de Sta. Cruz, lo conveniente, y dirijas pr su mismo conducto el expediente al senor prefecto de primer distrito.

ALVARADO.

Exmo. Sr. Gobernador: El Cindano Antonio Buelna, natural de esta capital y en la ville de Branciforte arte V. E. con el debide respeto pasa a manifeston q'en tiempo, qe. gobernata esto saelo el Sr. Figueroa presento una enstancia con objecto deqr. siles consediese un sitio sin marca su extencion, pues en aquel tiempo un sitio entendia como ahora un paraje que no tiene apunto figo limite, Dicho Sr. Figueroa (que en porque) decreto favorablemente con litulo de posesion despues en vista de ql. los biencites se multiplicaron hubo de presentar nueva instancia ante el Sr. Gutierres a efecto de pedir mas terreno, y estando detenido la solicitud en la officina quizo, corriendo sus tramites, acaecio la ida de este sr. por cuyo motivo se considera haberse transpapelado. y por tanto ahora ante V. E. presento esto suplican dole se digne concederle la ampliacion del teneno que actualmente poser in la costa de la ex mission de Sta. Cruz el norte, distante de esto como doce o trece leguas, en cuatro sitios de granado mayor que considera necesario por la propagacion de su bienes. Gracia qe. no duda alcanzar de la benignidad de V. E.

SER. AFRN. SUBDITO.

Monterey, Marzo 2 de 1833.

ANTONIO BUELNA.

E. S. E'l administrador de Sta. Cruz, cumpliendo con lo prevenido en el decreto, marginal qe V. E. se serbio mandar estender con fecha 9 del corriente en la presente instancia dice, que el solicitante ume las cantidades necesarias para obtener el terreno a que se refere, y que esta como segun se ve, en su representacion, a tant a distancia del establicimiento en mi carga lo es enteramente inutil lo ge creo conveniente informar a V. E. que es de accerderse a la instancia del Sen. Don Antonio Buelnã.

Sta. Cruz, Mzo. 2 de 1839.

BANCO SOTO, *Pueblo de.*

Pueblo de Sn. Juan de Casto, Marzo 20 de 1839. Visto lo contenido en esta instancia el prefecto del primer distrito informa, que no aparese inconveniente para que el interesado sea agraciado en el terreno que pretende.

JOSÉ CASTRO.

Monterey, Abril 16 de 1839.

Vista la peticion con que da principio este expediente el informe

de 1er. distrito, con todo lo demas que se tuvo presente y ver convino de conformidad con dispuesto por las leyes y reglamentos de la materia se declara al cind Antonio Buelna, dueño en propiedad de la extension de cuatro sitios de gorñado mayor poco mas ó menos, segun demurestra el diseño que cone agregarlo en este expediente que promovio para el fin indicado: librese el correspondiente despacho al interesado con las condiciones acos tumbradas tomese razon en el libro respectivo y reservese este expediente para la debida aprobacion de la exma junta departmental el Sn. Dn. Juan B. Alvarado, gobernador del departmento de las Californias, asi lo mando decreto y firmo, de que doy feé.

ALVARADO.

En la fha se le notifico a Don Antonio Buelna el decreto del señor gobernador que y entendido de el digo que lo oyé y lo firma con migo pr. su debido constancia.

ANTONIO BUELNA.

Monterey, 22 Mayo de 1840.

Dado cuenta a la E. junta departmental accordo en session de hoy que pase a la comision de agricultura.

JOSE Z. FERNANDEZ, *S'roi.*

En viente y seis del mismo lo devolvio con el dictamen que se acompaña.

FERNANDEZ.

En vista de la aprobacion ortorgado en viente y seis del mes po anterior por la E. junta departmental librese testimonio de ella a la parte de D. Antonio Buelna, en confirmacion del terreno que pretendio constante de cuatro sitios de ganado mayor, y obturo en diez y seis de Abril del año proximo pasado. Ell Sr. D. Juan B. Alvarado, gobernador constitutional del departmento de las Californias, asi lo preveyo y firmo de que doy feé.

ALVARADO.

E. S. La comisson de agricultura y anreicro, unidas en cargardas pr. V. E. de dictamenar los expedientes presentados pr. el exmo sor. gobernador en la sesion anterior visto lo actuado é informes y demas que vez, se ha podido, propone a la deliberacion de V. E. las arto. signientes:

Art. 1°. Se aprueba la concesion hecha pr. la gobierno departmental confha 16 de Abril, 1839, de la compliacion de cuatro sitios, poco mas o menos de ganado mayor en la persona de D. Antonio Buelna.

2d. Que se dernelva al senor sor. gofdro. el espediente pr. los fines q sean convenientes.

Monterey, Mayo 25 de 1840.

SARGUÉLLO.

JOSE RAFAEL GONZALEZ.

. los

O.

MONTEREY, 26 *de Mayo de* 1840.

En sesion de este dia aprobo la E. junta departmental los dos articulos conque conchuye el dictamen anterior.

MANUEL JIMENO, *Presidte.*

JOSE L. FERNANDEZ, *Secr.*

[For map, see original, page 32.]

Town of Brancifort, year 1839.

Record of proceedings at the instance of the citizen Buelna, soliciting an enlargement of land.

197.

Excellent Sir Governor: The citizen, Antonio Buelna, a native of this capital, and resident of the town of Bancifort, with due respect proceeds to show your excellency, that in the time when Tiguerra governed this territory, I presented an instance with the view to be granted a "sitio," with designating its extent, for in that time, as at present, by a sitio, was understood a location that has no appointed fixed limit. Said Tiguerra decreed favorably to a title of possession; afterwards, on account of the little stock having multiplied, I had to present a new instance before Gutierres, to the effect of asking for more land, and the solicital, on being detained in the office, perhaps on account of the said gentleman's departure while the procedure was going on, wherefore it is considered to have been mislaid; therefore I now present this solicitation before your excellency, praying you to be pleased to grant me the enlargement of the land I actually possess, on the coast of the ex mission of Santa Cruz towards the north, distant from this about twelve or thirteen leagues, being four square leagues (sitios de ganado mayor) which (extent) I consider necessary for the propagation of my cattle, a favor which I don't doubt to obtain from your excellency's benignity.

I am your humble servant,

ANTONIO BUELNA.

Monterey, March 2, 1839.

(In the margin) Monterey, 1st March, 1839.

The administrator of Santa Cruz will report what is convenient, and let the expediente be directed in the same manner to the prefect of the first district.

ALVARADO.

Excellent Sir: The administrator of San Cruz, in compliance with the provision in the marginal decree, which your excellency was pleased to deliver under date 9th instant, says in the present

instance, that the petitioner is possessed of the necessary qualifications to obtain the land referred to, and that as seen in his representations, it being at so long a distance from the establishment in my charge, it is entirely useless; wherefore, I think convenient to report to your excellency, that the instance of Mr. Antonio Buelna is to be acceded.

Santa Cruz, March 20th, 1839.

TREO SOTO.

Puebla de San Juan de Castro:

March 20th, 1839.

Having seen the contents of this instance, the prefect of the 1st district reports that it does not appear inconvenient that the interested party be granted the land he solicits.

JOSE CASTRO.

MONTEREY, April 16, 1839.

In view of the petition with which this expediente commences, the report of the prefect of the first district, with whatever else to be borne in mind and was to the purpose, in conformity with the requirements of the laws and regulations on the subject, the citizen, Antonio Buelna, is declared owner in his own right of the extent of four square leagues, (sitios de ganado mayor,) a little more or less, as is shown in the sketch attached to this expediente, which he forwarded for the purpose indicated. Let the corresponding document be issued to the interested party with the usual conditions, have it entered in the respective book, and be this expediente reserved for the due approbation of the excellent departmental assembly. Juan B. Alvarado, governor of the department of both Californias, so ordered, decreed, and signed, of which I bear testimony.

ALVARADO.

On the same day, Antonio Buelna was notified of the foregoing decree of the governor, and having had an understanding of it, he said he had heard it, and he signed with me for due attestation.

ANTONIO BUELNA.

MONTEREY, *May 22d*, 1840.

Having notified the excellent departmental assembly hereof, it was agreed in to-day's to send it to the committee on agriculture. JOSE L. FERNANDO, *Secretary.*

On the 26th day of the same month it was returned with the accompanying opinion.

FERNANDO.

MONTEREY, 12*th June*, 1840.

In virtue of the approbation granted on the 26th last past, by the excellent departmental assembly, let a testimonial of it be issued to the party, D. Antonio Buelna, in confirmation of the land he claimed, consisting of four square leagues, (sitios de ganado mayor,) and which he obtained on the 16th of April, last year. Juan B. Alvarado, constitutional governor of the department of both Californias, thus provided and signed, of which I bear testimony.

ALVARADO.

Excellent Sir: The committee on agriculture and commerce, jointly charged by your excellency to deliver our opinion on the expediente, presented by the excellent sir governor in the foregoing session, having seen the acts and reports, and whatever else it was enabled to see, submits to your excellency's deliberation the following articles:

Article 1st. It approves of the grant made by the departmental government under date 16th April, 1839, to the enlargement of four square leagues of land, little more or less, in the person of Antonio Buelna.

2d. That the expediente be returned to the excellent sir governor for the purposes that may be convenient.

Monterey, May 26th, 1840.

SARGUELLO.

JOSE R. GONZALES.

MONTEREY, *May* 26*th*, 1840.

In to-day's session the excellent departmental assembly approved of the two articles with which the foregoing opinion concludes.

MAN. JIMENO, *President.*

JOSE Z. FERNANDO, *Secretary.*

B.

I, Francisco Rodriguez, in my own and my wife's (Maria Concepcion Valencia's) name, declare that I have sold to Don Salvador Castro one league of land in the location known by the name of San Gregorio, situate on the coast to the north of Santa Cruz, which land, consisting of four square leagues, (sitios de ganado mayor,) was of the property of the deceased Antonio Buelna, granted by the government, as shown in the documents I present, and with which the party is thoroughly acquainted, for the consideration of one thousand five hundred dollars, ($1,500,) to cover the debts of the deceased Antonio Buelna, which said debts are shown in the testament of said deceased, and which said sum I have received to my satisfaction. The land sold and to which I

make reference is one league below the Arroyo *below*, including the laguna, to completing the measurements of said one league.

And in witness whereof, we sign in the puebla de S. José G, on the 29th January, 1849, in the presence of witnesses.

(Signed) FCO. RODRIGUEZ, [SEAL.]
MA. CONCEPCION VALENCIA.
(✕ her cross.)

As witnesses:
JOSE FERNANDEZ,
DOLORES PACHECO.

C.

This indenture, made this seventh day of August, A. D. eighteen hundred and fifty-two, between Francisco Rodriguez and Maria Concepcion Valencia, his wife, of the county of Santa Clara, and State of California, of the first part, and Salvador Castro, of the county and State aforesaid, of the second part, witnesseth: that whereas the said party of the first part did, on the 29th day of January, A. D. 1849, in consideration of the sum of $1,500, make, execute, and deliver a deed of sale and conveyance to the said party of the second part for one league of land in the place known by the name of San Gregorio, on the coast north of Santa Cruz, being part of a tract of four leagues of land granted by the government to Antonio Buelna, and the description whereof not being sufficiently definite, the same is hereby declared to be situate and bounded as follows, and containing one league, more or less: Commencing at a stake marked "A," in the Canada de las Tunis, where the Arroyo de las Tunis comes out of the mountains; thence running southerly with the ridge of the mountains to the stake marked "B," in the Arroyo hondo, (Deep creek;) thence following said Arroyo hondo until it meets the Arroyo de San Gregorio; thence following the Arroyo de San Gregorio to a stake marked C, on a white rock in the mountain, situate on the west side of said Arroyo; thence northwardly about two miles to a high conical peak of the mountain, on which is placed stake marked "D;" thence easterly to the place of beginning. And the said parties of the first part do hereby declare that the above described tract of land is the same that was intended to be conveyed, and was conveyed by the said parties of the first part to the said party of the second part, and they do hereby ratify and confirm the same.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FRANCISCO RODRIGUES, [SEAL.]
MARIA CONCEPCION VALENCIA. [SEAL.]

Signed, sealed, and delivered in presence of—
FUELUR S. GAULT,
FLAVIUS B. CHANILL,
JUAN PANSSLE GULNACK.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On the 7th day of August, A. D. 1852, personally appeared before me, a notary public in and for said county, Francisco Rodrigues and Maria Conception Valencia, his wife, known to me to be the persons described in and who executed the foregoing instruments, who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and the said Maria Conception Valencia being made acquainted with the contents of the aforesaid instrument on an examination afar, from and without the hearing of her husband, acknowledged to me that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that does not wish to retract the execution of the same.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, this 7th day of August, A. D. 1852, at San José.

[SEAL.]

FREDERIC HULL, *Notary Public.*

D.

U. S. SUR. GENERAL'S OFFICE,
San Francisco, Cal.

Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth of June, 1853, and for other purposes;" and in consequence of a certificate of the United States district court for the northern district of California, of which a copy is annexed, having been filed in this office, whereby it appears that the Attorney General of the United States, having given notice that it was not the intention of the United States to prosecute the appeal from the said district court, by which it recognized and confirmed the claim and title of Maria Concepcion Valencia de Rodriguez, formerly Maria Concepcion Valencia de Buelna, widow of Antonio Buelna, deceased, to the tract of three square leagues therein referred to, (and being a part of the "San Gregorio" rancho,) said appeal has been dismissed by the said district court, and thereby the decision in favor of the said Maria Concepcion Valencia de Rodriguez, formerly Maria Concepcion Valencia de Buelna, widow of Antonio Buelna, deceased, has become final, the said tract has been surveyed in conformity with the said decision; and I do certify the annexed map to be a true and correct plat of

said tract of land, as appears by the field notes of the survey thereof, made by Ralph W. Norris, deputy surveyor, in the month of August, 1857, under the direction of this office, which, having been examined and approved, are now on file therein.

And I do further certify, that under and by virtue of said confirmation and survey, the said Maria Concepcion Valencia de Rodriguez, formerly Maria Concepcion Valencia de Buelna, widow of Antonio Buelna, deceased, is entitled to a patent from the United States, on the presentation hereof to the General Land Office for the said tract of land, the same being bounded and described as follows, to wit:

Beginning at an alder tree southwest corner of the Salvador Castro; thence, according to the true meridian, (the variation of the magnetic needle being fifteen degrees thirty minutes east,) north six degrees west, at seven chains, crosses Corte Madeira creek, twelve links wide, running south sixty-five degrees west, at thirty-five chains, the base of a hill, and ascends sixty-five chains to a post marked S G, station on the summit of a hill or peak mentioned in the decree of the court; thence descending and over hills north two degrees and thirty minutes east, at fifteen chains intersects a valley, course east and west; at forty chains a road course north twenty-two degrees east, and leaves the valley at seventy-five chains; there is a creek about six chains west of the line, and running south thirty-five degrees west at eighty-four chains, a road course south ten degrees east, the Corte Madeira creek being about eight chains east, and having a general course south of twelve and a half degrees east; at one hundred and forty-eight chains a ravine one hundred and fifty links wide course south thirty-three degrees east, at one hundred and ninety-two chains, intersects the south boundary of township six, south of range four west, forty-one chains, west of corner to sections five, six, thirty-one, and thirty-two, at two hundred and forty chains, enter red-wood timber, and ascend hill bearing north twenty degrees west, at two hundred and seventy-six chains, the summit of hill, and continue over steep hills, five hundred and fourteen chains, to station at the head of Tunis creek and northwest corner of the Salvador Castro rancho; thence down Tunis creek, with the meanders thereof, north eighty-one degrees thirty minutes west, fifteen chains and fifty links, to a red-wood stump, eleven feet in diameter, marked S G station; thence north sixty-four degrees thirty minutes west fourteen chains to station; thence south sixty-five degrees west six chains and fifty links to a red-wood tree eight feet in diameter, marked S G station; thence south fifty-nine degrees west nine chains and twenty-seven links to station; thence south eighty-one degrees west eight chains to a red-wood tree four and a half feet in diameter, marked S G station; thence south fifty-nine degrees west ten chains to station; thence south seventy degrees west eleven chains to station; thence

south ten degrees west fifty-six chains and fifty links to station; thence south fifty-three degrees west eleven chains and fifty links to station; thence south eighty-nine degrees west fourteen chains and fifty links to station; thence south sixty-four degrees west three chains to an oak fourteen inches in diameter, marked S G station; thence south thirty-six degrees west sixteen chains to a red-wood fourteen inches in diameter, marked S G station; thence south fifteen degrees west fifteen chains to a red-wood thirty inches in diameter, marked S G station; thence south thirty-eight degrees thirty minutes west, at twenty-two chains and fifty links, a red-wood forty inches in diameter, thirty-two chains and fifty links, to an oak twenty-six inches in diameter, station; thence south seventeen degrees west, at twelve chains, a creek enters in on the right, running south twenty-seven degrees east, eighteen chains, to a red-wood tree twenty-four inches in diameter, marked S G station; thence south thirty-seven degrees west three chains and fifty links to an oak, ten inches in diameter, station; thence south thirty-one degrees west twenty-one chains and fifty links to station; thence south twenty-one degrees west at twenty-five chains leave the red-wood timber, enters open country, seventy-three chains and fifty links, to post, station; thence south twenty-five degrees west eight chains and fifty links, to station; thence south sixty-two degrees west eleven chains and fifty links, to station; thence south fifty-one degrees west one hundred chains to station; thence south seventeen degrees west at eighteen chains intersects the south boundary of township six south, range five west, twelve chains, east of the corner, to sections three, four, thirty-three and thirty-four, twenty chains, to station; thence south one degree east, nine chains and fifty links, to station; thence south eighty degrees thirty minutes west, twenty-nine chains and seventy-nine links, to station; thence south forty-four degrees west five chains, to station; thence north seventy-four degrees west twelve chains and twenty-five links to post station at the mouth of the creek and shore of the Pacific ocean; thence by traverse of the beach of the Pacific ocean south ten degrees east fifty-three chains to station; thence south one degree east six chains to station; thence south twenty-three degrees thirty minutes west ten chains to station; thence south one degree thirty minutes west eighty-four chains to station; thence south six degrees east, at forty-one chains and forty-one links, the mouth of San Gregoria creek, two hundred and fifty links wide, coming from south eighty degrees east fifty-three chains and forty-one links to a post marked S G, station; thence south thirteen degrees west one hundred and thirty chains to a post, marked S G, at the mouth of the Pomponio creek station; thence up the Pomponico creek north forty-five degrees thirty minutes east fifty-seven chains to station; and thence south seventy-six degrees forty-five minutes east fifty-six chains and seventy-eight links to a scrub oak four

inches in diameter, marked S G station; thence leaving Pompino creek and over open and rough hills north seventy degrees forty-five minutes east two hundred chains and fifty links to a scrub oak five inches in diameter, marked S G, in a ravine, station; and thence south eighty-two degrees and fifteen minutes east thirty-two chains and fifty-five links, to the place of beginning, containing thirteen thousand two hundred and seventy-three acres and twenty-three hundredths of an acre, and being designated upon the plats of the public surveys as lot number forty-one, in township six south, range four west; lot thirty-seven, in township six south, range five west; lot thirty-nine, in township seven south, range four west; and lot thirty-seven, in township seven south, of range five west, of the Mount Diable meridian.

In witness whereof, I have hereunto signed my name and caused the seal of said office to be affixed, this nineteenth day of November, 1857. [SEAL.]

J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court room in the city of San Francisco on Friday, the 24th day of July, in the year of our Lord one thousand eight hundred and fifty-seven. Present: the honorable Ogden Hoffman, district judge.

The UNITED STATES
vs.
MARIA CONCEPCION VALENCIA DE RODRIGUEZ. } D. C. 88, L. C. 542.

The Attorney General of the United States having given notice that no further appeal will be taken in this case, and a stipulation to that effect having been entered into by the district attorney, on motion of the U. S. Attorney, it is ordered, adjudged, and decreed that claimant have leave to proceed under the decree of this court heretofore rendered in her favor as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed July 24th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy clerk.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 25th day of July, A. D. 1857. [SEAL.]

JOHN A. MUNROE, *Clerk.*
By W. H. CHEVER, *Deputy.*

In the United States district court for the northern district of California.

MARIA CONCEPCION VALENCIA DE RODRIGUEZ, formerly MARIA CONCEPCION VALENCIA DE BUELNA, widow of ANTONIO BUELNA, dec'd, appellant,
vs.
The UNITED STATES, appellees.
} Decree No. 88.

Stated term, October 29th, 1855. Appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

This cause came on to be heard at the said term, on an appeal from the final decision of the board of land commissioners, to ascertain and settle private land claims in the State of California, under an act of Congress approved March 3d, 1851, upon the transcript of the proceedings and papers on which the said decision was founded, and on additional testimony taken before this court; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed that the said decision be and the same is hereby set aside and annulled; and it is further ordered, adjudged, and decreed that the claim of the appellant is a good and valid claim, and that the same is hereby confirmed to the extent of three square leagues to the land within the boundaries described in the plan attached to the expediente and referred to in the original grant, copies of which are on file in this cause, provided that the said quantity of three square leagues so confirmed be contained within the said boundaries; but if there be less than the said quantity of land contained within the said bounds, then the said claim is confirmed to the extent of such less quantity, and no more.

M. HALL McALLISTER,
Judge Cir. Court U. S., Dists. of Cala.

Endorsed: Filed October 29th, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

I, John A. Monroe, clerk of the district court of the United States, for the northern district of California, do hereby certify

the foregoing to be a true, full, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this fourth day of June, A. D. 1857.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

E.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
San Francisco, Cal.

Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth of June, eighteen hundred and fifty-three, and for other purposes," and in consequence of a certificate of the United States district court, for the northern district of California, of which a copy is annexed, having been filed in this office, whereby it appears that the Attorney General of the United States, having given notice that it was not the intention of the United States to prosecute the appeal from the decision of the said District Court, by which it recognized and confirmed the title and claim of Salvador Castro to a portion of the four leagues granted April 16th, 1839, by J. B. Alvarado to Antonio Buelna, and known as San Gregorio," "containing by estimation one square league," the said appeal has been vacated by the said district court, and thereby the said decision in favor of the said Salvador Castro has become final, the said tract has been surveyed in conformity to the said decision; and I do hereby certify the annexed map to be a true and accurate plat of the said tract of land, as appears by the field notes of the survey thereof, made by Ralph W. Norris, deputy surveyor, in the month of August, 1857, under the directions of this office, which, having been examined and approved, are now on file therein.

And I do further certify, that under and by virtue of the said confirmation and survey, the said Salvador Castro is entitled to a patent from the United States, upon the presentation hereof to the General Land Office for the said tract of land, the same being bounded and described as follows, to wit:

Beginning at the point where the Tunis creek comes out of the mountain, and at a double red-wood, each two and a half feet in diameter, marked S G, from which the base of a solid rock bears north thirty-five and a half degrees west, distant one hundred and thirty links; thence along the ridge of the mountains,

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ascending to the true meridian (the variation of the magnetic needle being fifteen degrees thirty minutes east) north fifty-six degrees thirty minutes east, six chains to an oak tree three feet in diameter, station; thence south sixty-eight degrees forty-five minutes east nine chains to station; thence south forty-eight degrees thirty minutes east five chains to station; thence south seventy-four degrees east three chains to station; then north seventy-eight degrees east six chains to station; thence north twenty-nine degrees east six chains to station; thence south eighty-six degrees east, at twenty chains and twenty links, an oak fourteen inches in diameter, twenty chains and fifty links to a red-wood tree three feet in diameter, station; thence south fifty-four degrees east twelve chains and fifty links to station; thence south eighty-six degrees east five chains to station; thence north sixty-four degrees thirty minutes east three chains to station; thence south seventy-six degrees east, at forty-five chains, intersects the line between sec's (16 and 17) sixteen and seventeen sixty-five chains north of the corner to sections sixteen, seventeen, twenty, and twenty-one, in township six south, range four west, fifty chains, to a live oak, marked M G station, on the summit of the Santa Cruz mountains at head of Bear Gulch, and on line of the rancho "Canada de Raimundo;" thence south fifty-six degrees east seventeen chains and ninety links to station; thence north sixty-five degrees east six chains to station; thence south five degrees west seventeen chains and fifty links to station; thence south twenty-four degrees thirty minutes east twenty-four chains to station; thence south fifty degrees thirty minutes east, twenty-eight chains and sixty-seven links, intersect the line between sections sixteen and twenty-one, fifty-five chains and twenty-three links east of the corner to sections sixteen, seventeen, twenty, and twenty-one, in township six south, range four west, thirty-eight chains thirty links to station; thence south fifty-three degrees thirty minutes east, at twenty-two chains and forty links, intersects the line between sections twenty-one and twenty-two, sixty chains and forty-two links north of the corner to sections twenty-one, twenty-two, twenty-seven, and twenty-eight, in township six south, of range four west, forty-three chains to station; thence south fifty-nine degrees thirty minutes east sixty-seven chains and seventy links to station; thence north seventy-five degrees east, at five chains and twenty links, intersects the line between sections twenty-two and twenty-three fourteen chains and eighty-six links north of the corner to sections twenty-two, twenty-three, twenty-six, and twenty-seven, in township six south, range four west, thirty-four chains to station, being the n.west corner of the Corte Madera rancho; thence south thirty-six degrees fifteen minutes east at twenty-four chains and fifty-links; Martins Saro mill bears south fifty degrees west about thirty chains distant; at twenty-seven chains and sixty links, intersect

the line between sections twenty-three and twenty-six forty-three chains and eighty-one links east of the cor. to sections twenty-two, twenty-three, twenty-six, and twenty-seven, in township six south, of range four west; at eighty-nine chains and seven links, intersects the line between sections twenty-five and twenty-six, thirty chains and eighteen links north of the corner to sections twenty-five, twenty-six, thirty-five, and thirty-six, in township six south, of range four west, one hundred and twenty-one chains and ninety-seven links to a gate post near Hardins, marked M M station; thence south thirty-four degrees fifteen minutes east twenty-five chains to place where stood post marked B, at the head of the Arroyo hondo station, and down left bank of Arroyo hondo; thence south sixty-two degrees and thirty minutes west, at sixteen chains an oak one foot in diameter, marked S G, in line at fifty-seven chains; Templeton's saw mill on left bank of the creek sixty-six chains to station; thence south nine degrees forty-five minutes west at four chains, a branch of the Arroyo hondo comes in at right angles on the right bank sixteen chains and thirty-six links to station; thence south thirty degrees thirty minutes west twenty-five chains to station; thence south fifty-seven degrees fifteen minutes west twenty-seven chains and seventeen links to station; thence south thirty-three degrees forty-five minutes west thirty chains to station; thence south one degree forty-five minutes west thirty chains to port station, from which an oak four inches in diameter, bears south eight degrees thirty minutes east, distant thirty-one links; thence south twenty-seven degrees east eleven chains and fifty links to mouth of creek on left bank, corner southwest, station; thence south twenty-two degrees thirty minutes east thirty-nine chains and thirty links, station; thence south twenty-two degrees forty five minutes east thirteen chains to an alder tree twelve inches diameter, marked S G, at the mouth of the Arroyo, and its entrance into San Gregorio creek, coming S. 68° W. thirteen chains and ten links to station, in the bed of the creek twenty links wide and down the bed of the San Gregorio creek; thence south sixteen degrees west at twenty-eight chains and fifty links, an alder tree four inches in diameter, marked S G, thirty chains to station; thence south sixteen degrees fifteen minutes east twelve chains to station; thence south eight degrees thirty minutes east twenty chains to station; thence south six degrees thirty minutes west eighteen chains to station; thence south forty-two degrees west fifteen chains and fifty links to station; thence south three degrees thirty minutes west twenty-three chains to station; thence south twenty-seven degrees thirty minutes west twenty-five chains and fifty links to station; thence north eighty-four degrees fifteen minutes west twenty-nine chains and sixty-nine links to station; thence south forty-five degrees west twelve chains to station; thence south sixty degrees west seventeen chains to a stake station, from which

a red-wood six inches in diameter, marked S G, bears north one degree east, distant seventeen links; thence north thirty degrees west fifteen chains and twenty-eight links to station; thence north thirty-seven degrees forty-five minutes west at sixteen chains a maple tree eight inches in diameter, marked S G, twenty-three chains and sixty-five links to station; thence west twenty chains and seventy-seven links to station; thence north eighty degrees forty-five minutes west fifteen chains and thirty-one links to an alder tree six inches in diameter, marked S G, station; thence south thirty-six degrees fifteen minutes west twenty-two chains and three links to station; thence south fifty-nine degrees fifteen minutes west twenty-six chains to station; thence south sixty-six degrees fifteen minutes west twenty chains and seventy links to a cotton-wood eight inches in diameter, marked S G, station; thence north eighty-six degrees fifteen minutes west twenty-five chains and fifty-three links to station; thence north eighty-six degrees forty-five minutes west twenty-five chains and thirty-six links to station; thence north sixty-three degrees and thirty minutes west seventeen chains to an alder eighteen inches in diameter, marked S G, station; thence north twenty-six degrees west sixteen chains to station; thence north fifty-one degrees forty-five minutes west fourteen chains to station; thence south eighty-three degrees forty-five minutes west nine chains and thirty-nine links to station; thence north eighty-six degrees west fourteen chains to an alder sixteen inches in diameter, marked S G, station, below a white rock on left bank of creek and the one mentioned, where stood the post marked "C;" thence north six degrees west at seven chains, crosses Corte Madera creek twelve links wide; running south sixty-five degrees west at thirty-five chains the base of a hill, and ascend sixty-five chains to a post marked S G, on summit of hill, a peak mentioned in decree, station; and thence descending and over hills north two degrees thirty minutes east, at fifteen chains enters a valley, course east and west; at forty chains a road course north twenty-two degrees east, and leaves valley at seventy-five chains; there is a creek about six chains west of the line running south thirty-five degrees west; at eighty-four chains a road course south ten degrees east; the Court Madera creek being about eight chains east, and having a general course south twelve degrees thirty minutes east; at one hundred and fifty-eight chains a ravine one hundred and fifty links wide, course south thirty-three degrees east; at one hundred and ninety-two chains, intersects the south boundary of township six south of range four west forty-one chains west of the corner to sections five, six, thirty-one, and thirty-two; at two hundred and forty chains, enters red-wood timber and ascend a hill bearing north twenty degrees west; at two hundred and seventy-six chains, the summit of a steep hill, and continue over steep hills five hundred and fourteen chains to the place of begin-

ning, at the head of Tunis creek, containing fifteen thousand seven hundred and thirty-three and fifty-four hundredths acres, and being designated upon the plats of the public surveys as lot number forty, in township six south, range four west; lot thirty-eight, township seven south, range four west.

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed, this 19th day of November, 1857.

[SEAL.]

J. W. MANDEVILLE, *U. S. Sur. Genl., Cal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Thursday, the 23d day of July, in the year of our Lord one thousand eight hundred and fifty-seven. Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES a vs. SALVADOR CASTRO. } D. C. 89, D. C. 358.

The Attorney General of the United States having given notice that no further appeal will be taken in this case, and a stipulation to that effect having been entered into by the district attorney, on motion of the U. S. Attorney, it is ordered, adjudged, and decreed that claimant have leave to proceed under the decree of this court, heretofore rendered in his favor as under final decree.

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed July 23d, 1857. John A. Munroe, clerk, by Wm. H. Chevers, deputy.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 24th day of July, A. D. 1857.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By WM. H. CHEVERS, *Deputy.*

THE UNITED STATES vs. SALVADOR CASTRO. } No. 89

Stated term, January 14, 1856. Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard at a stated term of this court on an appeal from the final decision of the board of commission-

ers to ascertain and settle private land claims in California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision and the papers and evidence on which said claim was founded, and the additional evidence taken in this court, and it appearing to the court that such transcript has been duly filed according to law, and counsel for both sides having appeared, it is ordered, adjudged, and decreed that the decision of said board be, and the same is hereby, reversed; and it is further ordered, adjudged, and decreed that the claim of the appellant be, and the same is hereby, confirmed to the tract of land described as follows, viz: Commencing at a stake marked "A," in the Cunada de las Tunis, where the Arroyo de las Tunis comes out of the mountains; thence running southerly along the ridge of the mountains to the stake, marked "B," on the Arroyo hondo, (Deep creek;) thence following said Arroyo until it meets the Arroyo de San Gregorio; thence following the same to a stake, marked "C," on a white rock in the mountains, west of said Arroyo; thence northwardly about two miles to a high conical peak of the mountains, to a stake, marked "D;" thence eastwardly to the beginning, being a portion of the four leagues granted April 16th, 1839, by J. B. Alvarado to Antonio Buelna, and known as San Gregorio, the tract hereby confirmed containing by estimation one square league, and being the same land described in the conveyance to claimant, filed before said board, and constituting a part of the record in this cause.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed January 14th, 1856. John A. Monroe, clerk, by Wm. H. Chevers, deputy.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing to be a true, full, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 29th day of May, A. D. 1857. [SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Thereupon, the parties by their solicitors file in court here the following agreement:

Circuit court of the District of Columbia for Washington county:

SALVADOR CASTRO
vs.
UNITED STATES.

WASHINGTON CITY, *June 9th*, 1858.

The undersigned hereby consent and agree to the filing and

allowing the same to form a part of the record. The following described papers in the case of the relators in behalf of the representatives of Salvador Castro *vs.* Commissioner of the General Land Office, viz:

1st. Certificates of the surveyor general of California and the decrees of the U. S. district court of California (northern district) in the two cases of Salvador Castro and Maria Concepcion de Rodriguez.

2d. Copy of the expediente and desino.

R. J. BRENT, *for Relator.*
THOS. A. HENDRICKS.

Thereupon, the court made the following decree:

U. STATES ex relatione SALVADOR CASTRO
vs.
THOMAS A. HENDRICKS, Commissioner of the Land Office.

This cause being set for hearing upon the petition, answer, exhibits, and agreement filed, and the arguments of counsel being heard as well on behalf of the petitioner as of the respondent, and the premises being fully considered, therefore it is this 10th day of June, 1858, by the said circuit court ordered, adjudged, and directed that the cause shown by the respondent why the writ of mandamus should not be ordered as prayed, is sufficient in the premises, and that the petition of the relator be, and the same is hereby, dismissed with costs to the respondent.

By order of the court.

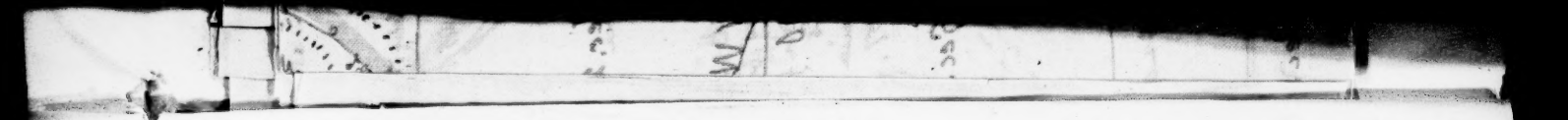
Test: JNO. A. SMITH, *Clk.*

And thereupon, the said relator, by his counsel aforesaid, prays an appeal from the judgement aforesaid, so as aforesaid rendered to the Supreme Court of the United States, and it is granted to him: whereupon the said relator, by his counsel aforesaid, files in court here a certain writing obligatory, commonly called an appeal bond, and which is contained in the following words, to wit: (omitted by consent of parties:) which being read and heard, and the security in said bond being by the court here approved, it is therefore ordered by the court here, that a transcript of the record of proceedings aforesaid, in the cause aforesaid, and all things thereunto relating, be transmitted to the said Supreme Court accordingly.

Test: JNO. A. SMITH, *Clk.*

DISTRICT OF COLUMBIA,
Washington county, to wit.

I, John A. Smith, clerk of the circuit court of the District of



trict of

Columbia for Washington county, hereby certify that the aforegoing is a full, true, and perfect transcript of the record of proceedings had in the said court, in which the United States ex relatione Salvador Castro is petitioner, and the honorable Thomas A. Hendricks, Commissioner of the General Land Office, is defendant.

In testimony whereof, I hereto subscribe my name and affix the seal of said court, this day of August, 1858.

JNO. A. SMITH, *Clk.*

[For maps, see original at end of record.]